



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 13-01278
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial and criminal security concerns.

Statement of the Case

On November 7, 2013, and September 5, 2014, Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated November 5, 2014, detailing security concerns for financial considerations under Guideline F and criminal conduct under Guideline J. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on December 9, 2014. He admitted three and denied six of the nine financial allegations. He denied all ten of the criminal conduct allegations. Department Counsel was prepared to proceed on March 18, 2015, and the case was assigned to me on March 20, 2015. DOD issued a notice of hearing on March 27, 2015, scheduling a hearing for April 17, 2015. I convened the hearing as scheduled. The Government offered seven exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 7. Applicant testified, and submitted eight exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through H. I left the record open for Applicant to submit additional documents. Applicant timely submitted two documents that I marked and admitted into the record without objection as AX I and J. (GX 8, Memorandum, dated April 22, 2015) I received the transcript of the hearing (Tr.) on April 22, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 55 years old and has been employed as a certified electrician by a defense contractor since July 2013. He was placed on furlough in December 2014, pending adjudication of his request for a security clearance. Prior to July 2013, he worked as an electrician or electrical technician for various employers, including defense contractors, since 1998. He married in 1987 and separated in 2001. He and his wife are still separated and have not finalized a divorce. He has one adult child. (Tr. 28-29; GX 1, e-QIP, dated September 5, 2014, and GX 2, e-QIP, dated November 12, 2013)

Applicant is a rated electrician for installation and maintenance of sophisticated security systems. He completed two specialized courses to be rated as silver (AX H, Certificate, dated July 24, 2013) and gold (AX G, dated August 24, 2013) in his specialty. He also presented letters of recommendation from his employer's customers. One customer wrote that Applicant is a reliable consultant and an excellent addition to their security team. (Ax E, Letter, dated September 8, 2014) Another customer noted that Applicant is a diligent and reliable consultant, and the customer was extremely happy with Applicant's performance. They consider him an excellent addition to their team. (AX F, Letter, dated November 14, 2014)

The SOR alleges, and a credit report (GX 6, dated December 14, 2013), Applicant's response to questions of the OPM investigator (GX 3, Personal Subject Interviews, dated January 28, 2014, February 3, 2014, March 7, 2014, and April 1, 2014), and Applicant's responses to the SOR allegations verify the following financial issues and delinquent debts for Applicant: a dismissed Chapter 13 bankruptcy filed in January 2005 (SOR 1.a); a utility debt in collection for \$2,469 (SOR 1.b); a debt for furniture past due for \$291 (SOR 1.c); a credit card debt delinquent for \$76 (SOR 1.d); a judgment for a credit union for \$3,661 (SOR 1.e); a 2010 state tax lien in the amount of \$1,301 (SOR 1.f); a judgment for an individual for \$11,099 (SOR 1.g); a judgment for a

lumber company for \$1,010 (SOR 1.h); and a judgment for apartment rent for \$1,010 (SOR 1.i). The amount of the delinquent debt is approximately \$20,000.

The SOR alleges the following criminal conduct allegations against Applicant verified by state (GX 4, dated December 18, 2013), and federal (GX 5, dated December 14, 2013) criminal history and records: an assault and battery on a family member in April 2005 and failing to appear on the charge in May 2005 (SOR 2.a); using threatening language over a public airway in February 2005 (SOR 2.b), and December 2003 (SOR 2.c); making a false statement to law enforcement in June 2002 (SOR 2.d); obstruction of justice, resisting a police officer, and cocaine and weapons possession in September 1988 (SOR 2.e); possession of stolen property in January 1987 (SOR 2.f); possession of a weapon, assault, and menacing in July 1986 (SOR 2.g); possession of stolen goods and grand larceny in November 1982 (SOR 2.h), and November 1981 (SOR 2.i); and attempted possession of a loaded gun in March 1981 (SOR 2.j).

Applicant alleges that some of the delinquent debts and criminal conduct allegations do not pertain to him. He believes the records list the offense as pertaining to him because his name is a common name. He admits that in the past he was young and foolish and made some bad criminal conduct decisions. Applicant attributes some of his financial issues to short periods of unemployment and frequent job changes caused by lay-offs, his employer losing contracts, and completion of work assignments. Applicant's work history shows frequent job changes for reasons beyond his control. (Tr. 23-24)

Applicant did not file a Chapter 13 bankruptcy in 2005. After he and his wife separated, she told him that she would file a bankruptcy. He did not believe her until he received bankruptcy documents from the court. The bankruptcy was subsequently dismissed. (Tr. 27-29)

Applicant admits the debts at SOR 1.b, 1.c, and 1.d. Applicant has not taken any action to pay the utility debt at SOR 1.b. He was laid off by his employer in December 2014, and does not have any income. With no income, he has not been able to pay this debt. He will start to pay it when he returns to work. (Tr. 29-30) Applicant has been paying the furniture debt at SOR 1.c. He is current with his payments and the balance is now approximately \$500. (Tr. 30-33; AX A, Receipt; dated October 20, 2014; AX J, Receipt, dated April 20, 2015) Applicant has paid in full the credit card debt at SOR 1.d in September 2014. (Tr. 33-34; AX B, Statement, dated April 23, 2015)

The debt at SOR 1.e pertains to a car loan for an automobile that Applicant's wife received when they separated. Applicant and his wife signed the car loan together, but his wife was responsible for the payments. She fell behind on the payments and the creditor called him about the loan and repossessed the car. His wife prevailed on the creditor and they returned the car to her. She fell behind on payments again, and the creditor sought a judgment. The creditor was represented at the judgment hearing. The judge informed Applicant that he was released from the loan and it was his wife's

responsibility. He does not know why the debt is on his credit report. He had a car loan with the same creditor for his car that he paid in full. (Tr. 34-38)

The state taxes at SOR 1.f have been paid and the lien released. (Tr. 38; Response to SOR, Exhibit 1A, State Tax Information, dated September 26, 2011) Applicant does not know the creditor that has the judgment listed at SOR 1.g. He disputed the judgment with the credit reporting agencies, and he was informed the entry would be removed from his credit reports. It is still on the reports obtained by Department Counsel. He does not have the removal information he received from the credit reporting agencies since the action was taken in 2008. (Tr. 38-42)

Applicant also disputed the judgments at SOR 1.h and 1.i. He has never had business dealings with the creditors listed for the judgments, and has no information on the debts. He believes the debts may be duplicates since the judgments are approximately for the same amount and the dates of the judgments are a month apart. He disputed the debts with the credit reporting agencies but was informed that the dispute was denied, and the debts were attributed to him. He was not successful in attempting to contact the company for the debt at SOR 1.h after the hearing. The company may no longer be in business. This may be a debt attributed to him because of his common name. (Tr. 42; AX I, Letter, undated)

Applicant notes that the birth date listed on the criminal records at GX 5 is not his birth date. However, some of the offenses listed on the exhibit are accurate. Also, some of the allegations were incorrectly written in the SOR as noted below.

Applicant's brother was a frequent illegal drug user. Applicant tried to help him by providing work running an ice cream truck. Applicant discovered that this brother was taking money from the business. When he confronted his brother, they had a fight. (SOR 2.a) When he and his brother were taken to court, the judge dismissed the case and told them to find a better way to resolve disputes. The case was nolle prossed. (Tr. 50-53; GX 4, State Police Criminal Records, dated December 18, 2013) The court has informed Applicant that there is no record against him for a December 2003 offense of profane and threatening language over a public airway as listed at SOR 2.b. (Tr. 48-49; AX C, Letter, dated April 1, 2015) The same criminal offense against Applicant in February 2005 at SOR 2.c was dismissed. (Tr.49-50; AX D, Court Documents, dated February 15, 2005) The charge of making a false statement at SOR 2.d was dismissed. (Tr. 63; GX 5, Criminal Records) Charges of obstruction of justice, and weapons and cocaine possession in 1988 (SOR 2.e) were dismissed. (Tr. 62-63)

Applicant admits that he was charged with possession of stolen property in January 1987 (SOR 2.f). He purchased a car from a friend and the friend provided him a set of license plates to use until he registered the car in his name. He did not know that the license plates were stolen. He paid a fine of \$50. The offense of criminal possession of a firearm and menacing in 1986 (SOR 2.g) was dismissed. (Tr. 61-62)

Applicant noted that the offense listed at SOR 2.h and 2.i is the same offense. In November 1982, not November 1981, he was charged with possession of stolen property and grand larceny. He was sentenced to 27 months to 54 months of confinement (SOR 2.h). He served two years in prison which changed him for the better. (Tr. 56-60)

Applicant acknowledges the accuracy of the possession of a loaded handgun offense in 1981 as listed at SOR 2.j. He was only 20 years old at the time and immature. He pled guilty to the offense and was placed on five years of probation which he served. (Tr. 50-56; GX. 5, Criminal Records)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant had financial difficulties when he and his wife separated in 2001. Applicant's history of delinquent debts is documented in his credit report, his OPM interview, and his testimony at the hearing. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem;

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts, and:

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

These mitigating conditions apply. Applicant incurred delinquent debt from frequent job changes, periods of underemployment, and unemployment. These conditions were beyond his control and are unlikely to recur since he has employment with a reputable company and has a good work reputation. He acted responsibly towards his debts by either paying them in full or now paying under payment plans. He disputed debts that are not his responsibility. While Applicant did not present evidence of financial counseling, he has resolved his debts and they are under control.

Applicant established his good-faith initiative to pay his debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant did not file a Chapter 13 bankruptcy. The bankruptcy was filed unbeknownst to him by his wife while they were separate. He paid two debts in full and is paying another debt under a payment plan. He disputes three debts for which he has no information. He established that another debt is his wife's, not his, debt that is her responsibility. There is only one debt that he has not yet addressed, but he has a plan to resolve it when he completes payment of the debt he is now paying.

Applicant has established a meaningful track record of debt payment by resolving, paying, or disputing all of his delinquent debts. He has shown that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances. Applicant has shown that he is managing his personal financial

obligations reasonably and responsibly, and his financial problems are behind him. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Criminal Conduct

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature it calls into question a person's ability or willingness to comply with laws, rules, and regulations (AG ¶ 30). Applicant was charged with a variety of criminal offenses from 1981 until 2005. Applicant's history of criminal actions questions his judgment, reliability, trustworthiness, and ability and willingness to comply with laws, rules, and regulations. His criminal history raises the following Criminal Conduct Disqualifying Conditions under AG ¶ 31:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

I considered all of the mitigating conditions under criminal conduct, especially the following Mitigating Conditions under AG ¶ 32:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

These mitigating conditions apply. The SOR alleges ten criminal offenses. Five of the offenses were committed approximately 30 years ago. The recent five offenses were domestic-related offenses, and have either been dismissed or not prosecuted. Applicant presented evidence that the recent offenses alleged under SOR 2.a, 2.b, 2.c, and 2.d were either not prosecuted or dismissed by the court.

The allegations under SOR 2.e to 2.j were offenses that happened from 1981 to 1988. The allegation of obstruction of justice and cocaine possession (SOR 2.e) was dismissed. Applicant was convicted of possession of stolen property in 1987 (SOR 2.f) and fined \$50. The charge of possession of a weapon in 1986 (SOR 2.g) was dismissed. The allegations of possession of stolen property and grand larceny in 1981 or 1982 are the same offense (SOR 2.h and 2.i). He was convicted of the offense and

served two years confinement. He was convicted of possession of a loaded hand gun in 1981 and served five years of probation.

Applicant was young and immature at the time he was involved in these offenses. He has matured and is now a productive worker. He has completed all of the imposed punishments. There is evidence that he did not commit some of the offenses because the charges were either dismissed or not prosecuted. There was a 14 year span of no criminal conduct between his earlier offenses and the recent domestic-related offenses. It has been ten years since the last domestic-related offense. Sufficient time has passed since the criminal behavior to indicate he is rehabilitated. His conduct does not cast doubt on his reliability, trustworthiness, and good judgment. Applicant mitigated security concerns for criminal conduct.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered the views of Applicant's customer's and his excellent job performance. Applicant has resolved most of his delinquent debts, and he has a plan to continue to resolve his remaining debt. This information shows Applicant's responsible management of his finances. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances, and that he will continue to responsibly manage his financial obligations. Applicant mitigated his past criminal history because his earlier offenses are very old and stale, and his recent criminal offenses were domestic-related offenses that were either dismissed or not prosecuted. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that

Applicant has mitigated security concerns arising under the financial considerations and criminal conduct guidelines. Eligibility for access to classified information is granted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.i	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a – 2.j	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge